

## HOUSE BILL NO. 589

INTRODUCED BY J. POMNICHOWSKI

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A DISEASE MUST BE CONSIDERED AS ARISING OUT OF EMPLOYMENT FOR OCCUPATIONAL DISEASE COMPENSATION PURPOSES IF THE CLAIMANT ESTABLISHES THAT IT IS MORE PROBABLE THAN NOT THAT THE EVENTS OCCURRING ON MORE THAN A SINGLE DAY OR WORK SHIFT ARE A SIGNIFICANT CONTRIBUTING FACTOR IN THE DEVELOPMENT OF THE DISEASE IN RELATION TO OTHER FACTORS CONTRIBUTING TO THE DISEASE; AND AMENDING SECTION 39-71-407, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 39-71-407, MCA, is amended to read:

**"39-71-407. Liability of insurers -- limitations.** (1) For workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual,

1 or employee handbook or any other document provided to the employee that is not wages but is designated as  
2 an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and  
3 the employee is not covered under this chapter while traveling.

4 (4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use  
5 of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the  
6 employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection  
7 does not apply.

8 (5) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two  
9 or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that  
10 another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later  
11 proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must  
12 receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

13 (6) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the  
14 same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits  
15 caused by the subsequent nonwork-related injury.

16 (7) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits  
17 is established by objective medical findings that contain sufficient factual and historical information concerning  
18 the relationship of the worker's condition to the original injury.

19 (8) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No.  
20 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent  
21 provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund  
22 under plan No. 3 with an occupational disease that arises out of or is contracted in the course and scope of  
23 employment.

24 (9) Occupational diseases are considered to arise out of employment or be contracted in the course and  
25 scope of employment if:

26 (a) the occupational disease is established by objective medical findings; and

27 (b) the claimant establishes that it is more probable than not that the events occurring on more than a  
28 single day or work shift are the major a significant contributing cause factor in the development of the  
29 occupational disease in relation to other factors contributing to the occupational disease.

30 (10) When compensation is payable for an occupational disease, the only employer liable is the employer

1 in whose employment the employee was last injuriously exposed to the hazard of the disease.

2 (11) When there is more than one insurer and only one employer at the time that the employee was  
3 injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the  
4 earlier of:

5 (a) the time that the occupational disease was first diagnosed by a treating physician or medical panel;  
6 or

7 (b) the time that the employee knew or should have known that the condition was the result of an  
8 occupational disease.

9 (12) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or  
10 substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30,  
11 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with  
12 respect to miners previously employed in the mine if acquisition had not occurred and that person had continued  
13 to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

14 (13) As used in this section, "major contributing cause" means a cause that is the leading cause  
15 contributing to the result when compared to all other contributing causes."

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